

Applicants note that the previously filed PTO-1449 paper and Information Disclosure Statement has not been returned. Applicants respectfully request consideration of the Information Disclosure Statement, PTO-1449 paper and cited references and return of an initialed copy of the PTO-1449 paper with the next Office communication.


II. Objection to Claims 16, 20 and 21

Claims 16, 20 and 21 were objected to as containing various informalities. Applicants submit that claims 16, 20 and 21, as amended, are in allowable form. Therefore, withdrawal of the objection and allowance of claims 16, 20 and 21 is respectfully requested.

III. Rejection of Claims 16 to 25 Under 35 U.S.C. § 112

Claims 16 to 25 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Applicants respectfully disagree and submits that claims 16 to 25 are sufficiently definite and allowable for the following reasons.

The second paragraph of 35 U.S.C. § 112 merely requires that the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. As provided in M.P.E.P. § 2173.02, the “focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph is whether the claim meets the threshold requirement of clarity and precision.” In this regard, the “essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity.” *Id.* (emphasis added). “Definiteness of claim language must be analyzed, not in a vacuum, but in light of[, *inter alia*, the] content of the particular application disclosure[and the] claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.” *Id.* If the claims, when read in light of the Specification, reasonably apprise those skilled in the art both of the utilization and scope of the invention, and if the language is as precise as the subject matter permits, the second paragraph of 35 U.S.C. § 112 demands no more. M.P.E.P. § 2173.05(a) (citing *Shatterproof Glass Corp. v. Libbey Owens Ford Co.*, 758 F.2d 613, 225 U.S.P.Q. 634 (Fed. Cir. 1985)).



In regard to claims 16 and 20, the Office Action alleges that the recitation "one of a scrim, a lattice and a netting" makes it unclear as to whether Applicants are claiming a scrim, lattice and a netting or just one of the three. Applicants respectfully disagree and submit that it is reasonably clear given the recitation of "one of" before "a scrim, a lattice and a netting" that the claim is limited to only one of the multiple elements listed. Applicants respectfully submit that one could not reasonably read "one of a scrim, a lattice and a netting" as "a scrim, lattice and a netting", as alleged by the Office Action. The Specification repeatedly makes reference to only one intermediate layer, see for example the Specification at p. 3, lines 14 to 16 and example 1 on page 11. Accordingly, withdrawal of the 35 U.S.C. § 112 rejection and allowance of claims 16 and 20 is respectfully requested.

In regard to claims 19 and 24, the Office Action alleges that it is unclear what is meant by a "core bicomponent fiber" and a "sheath component fiber". Applicants respectfully disagree and submit that it is reasonably clear that a core bicomponent fiber means a fiber having a core component and that a sheath component fiber means a fiber having a sheath component. See, for example, the example in the Specification at p.11, lines 22 to 23. Accordingly, withdrawal of the 35 U.S.C. § 112 rejection and allowance of claims 19 and 24 is respectfully requested.

As for claims 17 to 19, 23 and 24 which ultimately depend from claim 16 and therefore include all of the limitations of claim 16, Applicants respectfully submit that these claims are patentable for at least the reasons provide above in support of claim 16.

As for claims 21 and 22 which ultimately depend from claim 20 and therefore include all of the limitations of claim 20, Applicants respectfully submit that these claims are patentable for at least the reasons provide above in support of claim 20.

In summary, Applicants submit that claims 16 to 25 are reasonably clear and definite. Therefore, withdrawal of the 35 U.S.C. § 112 rejection and allowance of claims 16 to 25 is respectfully requested.

IV. Rejection of Claims 16 to 18 and 23 Under 35 U.S.C. § 103 (a)

Claims 16 to 18 and 23 were rejected as obvious over U.S. Patent No. 4,522,863 ("Keck et al."). Applicants respectfully submit that claims 16 to 18 and 23 are patentable over Keck et al. for the following reasons.

Claim 16 relates to a three-dimensionally structured fibrous web. Claim 16 recites that the web includes a composite subjected to one of a thermal embossing-calendering and an ultrasound calendering and shrunk by an influence of one of heat and water vapor. Claim 16 further recites that the composite consists of one of a scrim, a lattice and a netting, the one of the scrim, the lattice and the netting being covered on both sides by a nonwoven fabric. Claim 16 further recites that the one of the scrim, the lattice and the netting is made of thermoplastic continuous-filaments having a mesh. Claim 16 further recites that the mesh has points of contact and filament crossing points in longitudinal and transverse directions and a mesh size of 0.01 to 9 cm². Claim 16 further recites that the continuous filaments are 150 to 2000 µm thick and are thermally fused to each other at their points of contact. Claim 16 further recites that the filament crossing points in the longitudinal and transverse directions are not less distant from each other than 0.10 cm. Claim 16 further recites that the nonwoven fabric layer has one of repeating fold-shaped elevations and repeating wave-shaped elevations.

Keck et al. purportedly relate to a nonwoven fabric laminate. Abstract. The laminate is stated to include an outside layer, a middle scrim layer and a layer of meltblown microfibers. Abstract. The layers are stated to be bonded together by means of an adhesive on the middle scrim layer. Abstract. A bulky and soft material is stated to result in the window areas between the scrim threads. Abstract. Nowhere do Keck et al. disclose, or even suggest, the composite is subjected to one of a thermal embossing-calendering and an ultrasound calendering, as recited in claim 16. Further, Keck et al. do not disclose, or even suggest, the composite being shrunk by an influence of one of heat and water vapor, as recited in claim 16. Further, nowhere do Keck et al. disclose, or even suggest, a mesh having a mesh size of 0.01 to 9 cm², continuous filaments that are 150 to 2000 µm thick, and filament crossing points in the longitudinal and transverse directions that are not less distant from each other than 0.10 cm. Therefore, Applicants submit that Keck et al. do not disclose all of the limitations of claim 16.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Rijckaert*,

9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). As stated above, Keck et al. fail to disclose, or even suggest, each and every feature of amended claim 16. Specifically, Keck et al. do not disclose, or even suggest, the composite being subjected to one of a thermal embossing-calendering and an ultrasound calendering, as recited in claim 16. Further, nowhere do Keck et al. disclose, or even suggest, the composite being shrunk by an influence of one of heat and water vapor, as recited in claim 16. Further, nowhere do Keck et al. disclose, or even suggest, a mesh having a mesh size of 0.01 to 9 cm², continuous filaments that are 150 to 2000 µm thick, and filament crossing points in the longitudinal and transverse directions that are not less distant from each other than 0.10 cm. Therefore, Applicants submit that claim 16 is patentable over Keck et al.

Moreover, it is respectfully submitted that the cases of *In re Fine*, *supra*, and *In re Jones*, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992), make plain that the Office Action's generalized assertions that it would have been obvious to modify or combine the reference do not properly support a § 103 rejection. It is respectfully submitted that those cases make plain that the Office Action reflects a subjective "obvious to try" standard, and therefore does not reflect the proper evidence to support an obviousness rejection based on the reference relied upon. In particular, the Court in the case of *In re Fine* stated that:

The PTO has the burden under section 103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. This it has not done. . . .

Instead, the Examiner relies on hindsight in reaching his obviousness determination. . . . One cannot use hindsight

reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fine, 5 U.S.P.Q.2d at 1598 to 1600 (citations omitted; italics in original; emphasis added). Likewise, the Court in the case of *In re Jones* stated that:

Before the PTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. . . .

Conspicuously missing from this record is any evidence, other than the PTO's speculation (if it be called evidence) that one of ordinary skill . . . would have been motivated to make the modifications . . . necessary to arrive at the claimed [invention].

In re Jones, 21 U.S.P.Q.2d at 1943, 1944 (citations omitted; italics in original).

That is exactly the case here since it is believed and respectfully submitted that the present Office Action offers no evidence whatsoever, but only conclusory hindsight, reconstruction and speculation, which these cases have indicated does not constitute evidence that will support a proper obviousness finding. Unsupported assertions are not evidence as to why a person having ordinary skill in the art would be motivated to modify or combine references to provide the claimed subject matter of the claims to address the problems met thereby. Accordingly, the Office must provide proper evidence of a motivation for modifying or combining the reference to provide the claimed subject matter.

More recently, the Federal Circuit in the case of *In re Kotzab* has made plain that even if a claim concerns a "technologically simple concept" -- which is not the case here -- there still must be some finding as to the "specific understanding or principle within the knowledge of a skilled artisan" that would motivate a person having no knowledge of the claimed subject matter to "make the combination in the manner claimed," stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the

manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper prima facie case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Again, it is believed that there have been no such findings.

Accordingly, there is no evidence that the reference relied upon, whether taken alone, combined or modified, would provide the features and benefits of claim 16 herein. It is therefore respectfully submitted that claim 16 is allowable for these reasons. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of claims 16 is respectfully requested.

The Office Action admits that Keck et al. do not disclose a mesh having a mesh size of 0.01 to 9 cm², continuous filaments that are 150 to 2000 µm thick, and filament crossing points in the longitudinal and transverse directions that are not less distant from each other than 0.10 cm. The Office Action alleges, however, that the mesh size, filament thickness, filament distance and filament crossing point thicknesses are "result effective variables". The Office Action cites *In re Boesch*, 617 F.2d 272, and concludes that it would have been obvious to have optimized these factors since it has been held in *In re Boesch* that discovering an optimum value of a result effective diameter involves only routine skill in the art. See Office Action at p.4.

Firstly, Applicants request that the Examiner provide specific evidence to establish that mesh size, filament thickness and filament distance are result effective variables under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because this rejection is apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Second, Applicants submit that in *In re Boesch* is not applicable to the present case because each of the ranges of constituents in appellants' claimed alloys in *In re Boesch* overlaps ranges disclosed by the cited references. *Id.*, at p. 272. This is in stark contrast to the present case where the Examiner admits that Keck et al. do not disclose all of the limitations of claim 16, including a mesh having a mesh size of 0.01 to 9 cm², continuous filaments that are 150 to 2000 µm thick, or filament crossing points in

the longitudinal and transverse directions that are not less distant from each other than 0.10 cm. Nor does the Office Action cite other patents or publications to cure the deficiencies of Keck et al. Therefore, Applicants submit that claim 16 is patentable over Keck et al. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of claim 16 is respectfully requested.

As for claims 17, 18 and 23, which depend upon claim 16 and therefore include all of the limitations of claim 16, Applicants submit that these claims are patentable over Keck et al. for at least the reasons provided above in support of the patentability of claim 16. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of claims 17, 18 and 23 is respectfully requested.

Applicants submit the following additional reasons in support of the patentability of claims 17, 18 and 23. With respect to claim 17, Applicants submit that Keck et al. do not disclose, or even suggest, the thermoplastic continuous-filaments of the one of the scrim, the lattice and the netting having a first thickness at the crossing points and a second thickness between the crossing points, the first thickness being up to seven times the second thickness, as recited in claim 17. With respect to claims 18 and 23, Applicants submit that Keck et al. do not disclose, or even suggest, the fibers being bonded to each other using a bonding agent that has a hard grip. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of claims 17, 18 and 23 is respectfully requested.

V. Rejection of Claims 19 to 22 and 24 Under 35 U.S.C. § 103 (a)

Claims 19 to 22 and 24 were rejected as being obvious over Keck et al. in combination with U.S. Patent No. 5,733,826 ("Groitzsch"). Applicants respectfully submits that claims 19 to 22 and 24 are patentable over the combination of Keck et al. and Groitzsch for the following reasons.

Groitzsch purportedly relates to an inner sole for shoes and a process for its manufacture. See Title.

Claims 19 and 24, ultimately depend upon claim 16 and therefore include all of the limitations of claim 16. As indicated above, Keck et al. do not disclose, or even suggest, the composite being subjected to one of a thermal embossing-calendering and an ultrasound calendering, as recited in claim 16. Further, nowhere do Keck et al. disclose, or even suggest, the composite being shrunk by an influence of one of heat and water vapor, as recited in claim 16. Further, nowhere do Keck et al. disclose, or

even suggest, a mesh having a mesh size of 0.01 to 9 cm², continuous filaments that are 150 to 2000 μm thick, and filament crossing points in the longitudinal and transverse directions that are not less distant from each other than 0.10 cm, as recited in claim 16. Nor does Groitzsch cure the deficiencies of Keck et al. Therefore, the combination of Keck et al. and Groitzsch does not render obvious dependent claims 19 and 24. Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of claims 19 and 24 is respectfully requested.

Claim 20 relates to a method for manufacturing a three-dimensionally structured fibrous web. Claim 20 requires covering one of at least one lattice layer, at least one scrim layer and at least one netting layer with a nonwoven fabric layer on both sides, each layer of the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer weighing 3 to 300 g/m². Claim 20 recites that the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer is made of plastic continuous filaments having a mesh. Claim 20 further recites that the mesh has filament crossing points and a mesh size of 0.01 to 9 cm². Claim 20 further recites that the mesh is biaxially stretched and that a distance of adjacent ones of the filament crossing points is not less than 0.10 cm. Claim 20 further requires bonding the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer with the nonwoven fabric layer on both sides in continuous fashion using a laminating technique. Claim 20 further requires subjecting the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer with the nonwoven fabric layer on both sides which has been bonded to one of a thermal embossing-calendering and an ultrasound calendering. Claim 20 further requires subsequently subjecting the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer with the nonwoven fabric layer on both sides which was subjected to the one of the thermal embossing-calendering and the ultrasound calendering to a shrinking process at a temperature which lies between a softening and melting range of a material of the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer.

Nowhere do Keck et al. disclose, or even suggest, the at least one lattice layer, the at least one scrim layer and the at least one netting layer being made of plastic continuous filaments having a mesh, the mesh having filament crossing points and having a mesh size of 0.01 to 9 cm² and being biaxially stretched, a distance of adjacent ones of the filament crossing points being not less than 0.10 cm, as recited in claim 20.

Further, nowhere do Keck et al. disclose, or even suggest, bonding the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer with the nonwoven fabric layer on both sides in continuous fashion using a laminating technique, as recited in claim 20. Further, nowhere do Keck et al. disclose, or even suggest, subjecting the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer with the nonwoven fabric layer on both sides which has been bonded to one of a thermal embossing-calendering and an ultrasound calendering. Further, nowhere do Keck et al. disclose, or even suggest, subsequently subjecting the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer with the nonwoven fabric layer on both sides which was subjected to the one of the thermal embossing-calendering and the ultrasound calendering to a shrinking process at a temperature which lies between a softening and melting range of a material of the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer, as recited in claim 20. Nor does Groitzsch cure the deficiencies of Keck et al. Accordingly, neither Keck et al. or Groitzsch disclose all of the limitations of claim 20. Therefore, Applicants submit that combination of Keck et al. and Groitzsch does not render obvious claim 20. Withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of claim 20 is therefore respectfully requested.

Applicants further submit that the Office Action's generalized assertions that it would have been obvious to modify or combine the reference do not properly support the 35 U.S.C. § 103(a) rejection. The Office Action alleges that one having ordinary skill in the art at the time of the invention would have been motivated to have used Groitzsch's bicomponent fibers on the fibrous laminate of Keck et al. so as to create a laminate with economic efficiency and one that has the desirable characteristics of both sheath and core materials. See Office Action at p. 5. However, the present Office Action offers no evidence whatsoever, but only conclusory hindsight, reconstruction and speculation, which does not constitute evidence that will support a proper obviousness finding. Nowhere do either Keck et al. or Groitzsch suggest or provide motivation for using bicomponent fibers in the three-dimensionally structured fibrous web as recited in independent claims 16 and 20. Unsupported assertions are not evidence as to why a person having ordinary skill in the art would be motivated to modify or combine references to provide the claimed subject matter of the claims to address the problems met thereby. Accordingly, the Office must provide proper evidence of a

motivation for modifying or combining the reference to provide the claimed subject matter.

With respect to claims 21 and 22, which ultimately depend upon claim 20 and therefore include all of the limitations of claim 20, Applicants submit that these claims are patentable over the combination of Keck et al. and Groitzsch for at least the reasons provided above in support of the patentability of claim 20. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of claims 21 and 22 is respectfully requested.

In summary, Applicants respectfully submit that claims 19 to 22 and 24 are patentable over the combination of Keck et al. and Groitzsch. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of claims 19 to 22 and 24 is respectfully requested.

VI. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Attached hereto is a marked-up version of the changes made to the Specification and the claims by the current Amendment. The attached page is captioned "**Version with Markings to Show Changes Made.**"

Dated: July 16, 2003

Respectfully submitted,



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IN THE SPECIFICATION:

On page 1, the paragraph starting on line 20, has been amended as follows:

--U.S. Patent 4,302,495 [showns] shows fibrous webs.--.

IN THE CLAIMS:

Claims 16, 20 and 21 have been amended, without prejudice, as follows:

16. (Amended) A three-dimensionally structured fibrous web comprising:

a composite;

the composite being subjected to one of a thermal embossing-calendering and an ultrasound calendering and being shrunk by an influence of one of heat and water vapor; wherein the composite consists of one of a scrim, a lattice and a netting, the one of

the scrim, the lattice and the netting being covered on both sides by a nonwoven fabric;

wherein the one of the scrim, the lattice and the netting is made of thermoplastic continuous-filaments having a mesh, the mesh having points of contact and filament crossing points in longitudinal and transverse directions;

wherein the mesh has a mesh size of 0.01 to 9 [cm²] cm²;

wherein the continuous filaments are 150 to 2000 μm thick and are thermally fused

to each other at their points of contact;

wherein the filament crossing points in the longitudinal and transverse directions are

not less distant from each other than 0.10 cm; and

wherein the nonwoven fabric layer has one of repeating fold-shaped elevations and

repeating wave-shaped elevations.

20. (Amended) A method for manufacturing a three-dimensionally structured fibrous web comprising the following steps:

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covering one of at least one lattice layer, at least one scrim layer and at least one netting layer with a nonwoven fabric layer on both sides, each layer of the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer weighing 3 to 300 [g/m²] g/m², the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer being made of plastic continuous filaments having a mesh, the mesh having filament crossing points and having a mesh size of 0.01 to 9 [cm²] cm² and being biaxially stretched, a distance of adjacent ones of the filament crossing points being not less than 0.10 cm;

bonding the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer with the nonwoven fabric layer on both sides in continuous fashion using a laminating technique;

subjecting the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer with the nonwoven fabric layer on both sides which has been bonded to one of a thermal embossing-calendering and an ultrasound calendering; and

subsequently subjecting the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer with the nonwoven fabric layer on both sides which was subjected to the one of the thermal embossing-calendering and the ultrasound calendering to a shrinking process at a temperature which lies between a softening and melting range of a material of the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer.

21. (Amended) The method according to claim 20, further comprising the steps of:

covering at least one layer of the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer on one of one side and both sides with an unbonded nonwoven, the at least one layer of the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer having a shrinkable component, the shrinkable component having a [meting] melting point, the unbonded nonwoven being made up at least partly of bicomponent fibers having a high- and a

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low-melting component, the low-melting component having a melting point that is not higher than the melting point of the shrinkable component;

subjecting the at least one layer of the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer covered on the one of one side and both sides with the unbonded nonwoven to one of a thermal embossing-calendering and an ultrasound calendering; and

subsequently carrying out a shrinking of the at least one layer of the one of the at least one lattice layer, the at least one scrim layer and the at least one netting layer covered on the one of one side and both sides with the unbonded nonwoven which was subjected to the one of the thermal embossing-calendering and the ultrasound calendering, the shrinking being carried out as a result of the influence of heat or using water vapor.